IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1988 of 2004

with
CIVIL APPLICATION NO.7134 OF 2004

For Approval and Signature:

HON'BLE DR.JUSTICE J.N.BHATT
and
HON'BLE MR. JUSTICE M.D. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANTIBHAI MOHANBHAI PAREKH
Versus
GUJ. STATE CIVIL SUPPLY CORPN. LTD.

Appearance:
1. First Appeal No. 1988 of 2004
MR RAJESH K SHAH for Appellant No.
MR KM PATEL for Respondent No. 1

CORAM : HON'BLE DR.JUSTICE J.N.BHATT
and
HON'BLE MR. JUSTICE M.D. SHAH

Date of decision: 17/01/2005

ORAL JUDGEMENT

(Per : HON'BLE DR.JUSTICE J.N.BHATT)

1. The short question which has come up for consideration in this appeal under Section 96 of the Code of Civil Procedure, 1908 is as to whether the amount of Rs.1,01,639.60ps. along with interest decreed by the trial Court in Special Civil Suit no.387 of 1990 by passing a judgment, on 26-9-2002, is legal and valid or not?

2. We have heard the learned Advocate for the appellant as well as learned Advocate Mr. Varun Patel appearing for the original defendant. We have considered the facts and circumstances emerging from the record of the present case as well as the impugned judgment.

3. Following undisputed facts may be highlighted at the first which would help to determine the merits of this appeal:

(1) There is no dispute about the fact that the appellant-original defendant was working as a Godown Manager of the respondent-Gujarat State Civil Supplies Corporation at the relevant time, and therefore, he was in charge of the stock and the material in the godown.

(2) There was shortfall of goods upon there being an inventory.

(3) The contention raised before us is that the appellant alone was not in charge of the godown, but there were many other persons who are equally liable, but not acceptable.

(4) The loss suffered by the respondent-GSCS Ltd. including the interest has been assessed at Rs.1,38,250/- which is decreed by the trial Court in a suit filed by the Corporation.

(5) The plaintiff has examined the concerned witness Rikhil Devchand Parmar Exh.46. His evidence is quite credible and supported by the documentary evidence.

(6) The original defendant-appellant before

us did not cross- examine the witness of the plaintiff.

(7) The defendant himself also did not step in the witness box for the reasons not far to see.

4. Even the aforesaid admitted aspects themselves ipso facto constitute sufficient launching pad for passing the decree. Apart from that, nothing has been shown as to in what respect and in what manner, the impugned judgment and decree recorded by the trial Court should be said to be unjust and unreasonable justifying exercise of power or requiring our interference under Section 96 of the Code of Civil Procedure. We have also threadbare heard the learned Advocates, considered the evidence and the content and colour of the judgment challenged before us, and we are satisfied that the impugned judgment and decree are quite justified requiring no interference. Therefore, they are confirmed and the appeal being, totally, meritless is dismissed at the threshold with the cost of Rs.5000/- to the respondent.

5. In view of the order passed in the main First Appeal, no orders on Civil Application no.7134 of 2004.

(Dr.J.N.Bhatt,J.)

(M.D.Shah,J.)

stanley-jnb.